

## Complaint

## IN THE MATTER OF

JUVENILE FURNITURE MANUFACTURING COMPANY  
ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-532. Complaint, July 26, 1963—Decision, July 26, 1963*

Consent order requiring Louisville, Ky., retailers of children's and youth's furniture to cease representing falsely, through use of the word "manufacturing" in their corporate name and such statements in advertising as "Get Down to Earth Prices From The Factory", that they were manufacturers of the merchandise; and advertising falsely in newspapers, by use of a higher "Reg." and a lower "Now" price, that their usual prices were reduced by the difference, and that they had "Stores From Coast to Coast" when they actually had only two.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Juvenile Furniture Manufacturing Company, a corporation, and Mary Deen Gerstle, Irvine Gerstle and Joseph F. Lusk, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Juvenile Furniture Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 810 E. Broadway in the city of Louisville, State of Kentucky.

Respondents Mary Deen Gerstle, Irvine Gerstle, and Joseph F. Lusk are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of Mary Deen Gerstle is the same as that of the corporate respondent; the address of Irvine Gerstle is 3909 Reading Road, Cincinnati, Ohio; and, the address of Joseph F. Lusk is 1191 E. Broadway, Louisville, Kentucky.

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PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of children's and youth's furniture to the public.

PAR. 3. In the course and conduct of their business, respondents have caused their said products, when sold, to be shipped from their places of business in the States of Kentucky and Ohio to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of the aforesaid articles of merchandise, respondents now use, and for some time last past have used, the word "manufacturing" in their corporate name in advertising and promotional literature, and the statement "Get Down to Earth Prices From The Factory".

PAR. 5. Through the use of the aforesaid word "manufacturing" in their corporate name, standing alone, or through the use of the statement "Get Down to Earth Prices From The Factory" and others similar thereto, but not set out herein separately or in connection with said corporate name, respondents have represented, and are now representing, that they own, operate or control a factory or factories wherein their said articles of merchandise are manufactured, and that they are the manufacturers of said articles of merchandise.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact, said respondents do not own, operate or control a factory or factories wherein said articles of merchandise are manufactured, and do not manufacture any of said products.

PAR. 7. There is a preference on the part of members of the purchasing public for dealing directly with manufacturers of products, rather than with outlets, distributors, jobbers or other intermediaries, such preference being due in part to a belief that by dealing directly with the manufacturers, lower prices and other advantages may be obtained, a fact of which the Commission takes official notice.

PAR. 8. In the course and conduct of their business, and for the purpose of inducing the purchase of their furniture, the respondents have made numerous other statements in advertisements inserted in newspapers of general circulation and in circulars distributed by

them through the United States mail. Among and typical, but not all inclusive, are the following:

| CRIB MATTRESSES |            | BUNK BEDS  |            |
|-----------------|------------|------------|------------|
| <i>Reg.</i>     | <i>Now</i> | <i>Was</i> | <i>Now</i> |
| \$19.95         | \$14.88    | \$39.95    | \$25.00    |

America's Largest Juvenile Chain-Stores From Coast to Coast.

PAR. 9. Through the use of the aforesaid statements and representations and others similar thereto, not included herein, respondents represent and have represented directly or by implication that:

a. The higher stated prices set out in said advertisements in connection with the terms "Reg.—Now" and "Was—Now" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that the differences between the higher and lower prices represented savings to purchasers from respondents' usual and customary retail prices.

b. Their operations are national in scope.

PAR. 10. In truth and in fact:

a. The higher prices set out in said advertisements in connection with the terms "Reg.—Now" and "Was—Now" were in excess of the prices at which the advertised merchandise had been usually and customarily sold by respondents in the recent regular course of business and the differences between the higher and lower prices did not represent savings to purchasers from respondents' usual and customary prices.

b. Respondents' operations are not national in scope. Respondents have had two stores, one in Ohio and the other in Kentucky.

Therefore, the statements and representations as set forth in paragraphs 8 and 9 hereof were and are false, misleading and deceptive.

PAR. 11. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, claims and representations, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements, claims and representations were and are true and into the purchase of substantial quantities of respondents' furniture by reason of said erroneous and mistaken belief.

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PAR. 13. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Juvenile Furniture Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its office and principal place of business located at 810 E. Broadway, in the city of Louisville, State of Kentucky.

Respondent Mary Deen Gerstle is an officer of said corporation and her address is the same as that of said corporation.

Respondent Irvine Gerstle is an officer of said corporation. His address is 3909 Reading Road, Cincinnati, Ohio.

Respondent Joseph F. Lusk is an officer of said corporation. His address is 1191 E. Broadway, Louisville, Kentucky.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

*It is ordered,* That respondents, Juvenile Furniture Manufacturing Company, a corporation, and its officers, and Mary Deen Gerstle, Irvine Gerstle and Joseph F. Lusk, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of children's and youth's furniture or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "manufacturing", or any other word or words of similar import or meaning, as part of respondents' trade or corporate name or representing, directly or by implication, in any other manner, that they own or operate a factory or manufacture the merchandise sold by them.
2. Using the words "Reg.—Now" and "Was—Now", or words of similar import, to refer to any amount which is in excess of the price or prices at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business.
3. Representing, directly or by implication, that:
  - a. Any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price or prices at which such merchandise is usually and customarily sold by respondents at retail in the recent, regular course of their business.
  - b. Any saving from respondents' usual and customary retail price is afforded to the purchasers of respondents' merchandise unless the price at which it is offered constitutes a reduction from the price or prices at which said merchandise has been usually and customarily sold by respondents in the recent, regular course of their business.
4. Misrepresenting, by means of comparative prices, or in any other manner, the savings available to purchasers of respondents' merchandise.
5. Representing, directly or by implication, that their operations are national in scope; or misrepresenting in any manner the size or scope of their business.

*It is further ordered,* That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

## ZELIS HAND MOLDED DYNAMIC SHOES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION ACT*Docket 8526. Complaint, Aug. 14, 1962—Decision, July 29, 1963*

Order dismissing—it appearing that the individual respondent was deceased—  
complaint charging a manufacturer of molded shoes with falsely claiming  
orthopedic and reducing qualities for his shoes, among other things.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Zelis Hand Molded Dynamic Shoes, Inc., a corporation, and Walter Zerner, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Zelis Hand Molded Dynamic Shoes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at 889 Broadway, New York, New York. Said corporation conducts its business under the above-mentioned corporate title and also the assumed names, Zelis and Zely.

Respondent Walter Zerner is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, sale and distribution of molded shoes, that is, custom-made shoes constructed over plaster or wooden casts of the customer's feet, which said shoes come within the classification of devices, as "device" is defined in the Federal Trade Commission Act. Such shoes are designated as "Zelis Molded Dynamic Shoes" and "Zely Dynamic Molded Shoes."

PAR. 3. Respondents have caused and are now causing such shoes, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a course of trade in said products in commerce, as "commerce" is

defined in the Federal Trade Commission Act. The volume of business in such commerce is, and has been substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said shoes by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, pamphlets, circulars and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said shoes; and have disseminated, and caused the dissemination of, advertisements concerning said shoes by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said shoes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

After 35 years experience as an orthopedic shoemaker Zely has developed a NEW EXCLUSIVE DYNAMIC CASTING OF THE FOOT IN MOTION.

\* \* \* the special support you need to walk properly.

New breakthrough in preventing foot trouble.

\* \* \* \* \*  
Guaranteed to fit, to relieve, to please.

\* \* \* \* \*  
LABOR DAY has shown to the world the self contained power of 200,000 marching Union Members! How many of them had tired, aching, ailing feet? Nobody counted them! But we want to do something about it \* \* \*. Protect your feet with our guaranteed Zelis Molded Dynamic Shoes.

\* \* \* \* \*  
There are certainly more people than you think who need orthopedic shoes to walk, to move, to earn their livelihood. 80% of them have ruined their feet with badly fitting shoes. I think that all professionals who stand on their feet a long part of the day should have special handmade shoes fitted for them just as people with bunions, calluses, and hammertoes. No machine made shoe, corrective as it may be called, can help them.

\* \* \* \* \*  
Guarantees you perfect fitting shoes that will relieve you from pain and foot trouble.

I give FULL GUARANTEE of satisfaction to my clients \* \* \*

\* \* \* \* \*  
We specialize in weight regulating molded shoes \* \* \*.

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PAR. 6. Through the use of said advertisements and other similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. That the Zelis Molded Dynamic Shoe is an orthopedic device;
2. That Zelis Molded Dynamic Shoes will furnish the support necessary to enable any person to walk properly;
3. That the wearing of said shoes will correct, prevent or relieve tiredness, bunions, calluses, hammertoes, pain caused by foot trouble, discomfort of people who must stand or walk for long periods at a time, and all other foot trouble;
4. That the wearing of said shoes will help regulate a person's weight;
5. That respondents' shoes are, and are a substitute for, corrective shoes;
6. By use of the words "Guaranteed" and "Full Guarantee" in the advertising of their said product, that the entire product is guaranteed by them in every respect.

PAR. 7. In truth and in fact:

1. The Zelis Molded Dynamic Shoe is not an orthopedic device;
2. Zelis Molded Dynamic Shoes will not furnish the support necessary to enable all persons to walk properly;
3. The wearing of said shoes will not correct or prevent tiredness, bunions, calluses, hammertoes, pain caused by foot trouble, discomfort of people who must stand or walk for long periods at a time, or any other foot trouble. The only possible benefit which might be afforded the wearers thereof is relief from discomfort due to ill-fitting shoes;
4. The wearing of said shoes will not help regulate a person's weight;
5. Respondents' shoes are not, and are not a substitute for, corrective shoes;
6. The terms, conditions and extent to which said guarantee applies, and the manner in which the guarantor will perform thereunder are not disclosed in the aforesaid advertisements.

Therefore, the aforesaid advertisements set forth and referred to in paragraph 5 above were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

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Syllabus

*Mr. Bruce J. Brennan* supporting the complaint.  
No answer or appearance for respondents.

## INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

Zelis Hand Molded Dynamic Shoes, Inc., a corporation, and Walter Zerner, individually and as an officer of said corporation, are charged with false advertising in connection with the manufacture, sale, and distribution of molded shoes, advertised as "Zelis Molded Dynamic Shoes" and "Zely Dynamic Molded Shoes."

The complaint was issued on August 14, 1962, but service thereof was never effected on either the corporate or individual respondent.

By motion filed on May 28, 1963, and supplemental motion filed June 27, 1963, Commission counsel states, upon information and belief, that the individual respondent is dead and that, since his death, the said corporate respondent has not done any business. Therefore, counsel moves that the complaint be dismissed without prejudice.

It appearing that the individual respondent is now deceased and, upon his death, the corporate respondent ceased doing business, no useful purpose would be served in further prosecution of the complaint herein. Therefore, the motion to dismiss should be granted.

## ORDER

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed, without prejudice.

## DECISION OF THE COMMISSION

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner did, on the 29th day of July 1963, become the decision of the Commission.

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